

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY LAMON, No. CIV S-03-0423-FCD-CMK-P

Plaintiff,

vs. ORDER

C.K. PLILER, et al.,

Defendants.

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil rights action pursuant to 42 U.S.C. § 1983. On July 21, 2006, the court directed plaintiff to file a fourth amended complaint within 30 days. On August 7, 2006, plaintiff filed a fourth amended complaint. Plaintiff also filed a fourth amended complaint on August 14, 2006. As indicated by plaintiff's notation on the proof of service of the August 14, 2006, document, this amended complaint is duplicative of the August 7, 2006, pleading, which was properly filed. Therefore, the August 7, 2006, fourth amended complaint will be the operative pleading and the August 14, 2006, document will be stricken. The court will address the substance of plaintiff's August 7, 2006, fourth amended complaint by separate order.

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1           On September 14, 2006, plaintiff filed a notice of interlocutory appeal of the  
2 court's September 6, 2006, order denying injunctive relief as moot. Incident to that notice of  
3 appeal, plaintiff has requested a certificate of appealability (Doc. 120), transcripts at government  
4 expense (Doc. 119), and a transcript designation form (Doc. 123). First, any request for  
5 transcripts at government expense should be made to the Ninth Circuit Court of Appeals.  
6 Second, because no transcripts have been prepared in this case, there is no need to request  
7 transcripts at government expense. All documents contained in the court's file will be  
8 transmitted to the Court of Appeals as part of the record on appeal. Finally, because this is not a  
9 habeas corpus case, no certificate of appealability is required.

10           Accordingly, IT IS HEREBY ORDERED that Plaintiff's document entitled  
11 "Fourth Amended Complaint," filed on August 14, 2006 (Doc. 114) is stricken.

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13 DATED: October 4, 2006.

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16 CRAIG M. KELLISON  
UNITED STATES MAGISTRATE JUDGE